
(2016) 03 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Pet. u/s 104 No.24 of 2012, MP No.26 of 2012 and Caveat No.1040 of 2012

Bujo Devi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 4, Section 7

Citation : (2016) 3 JKJ 467

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Mr. Liyakat Ali Sumbaria, Advocate, for the Respondent No. 3; Mr. Jamroth Singh, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Mohammad Yaqoob Mir, J. - Petitioner was owner of the land measuring 33 kanals covered by Khasra No.22 min situated at Village

Rampur Tehsil Hiranagar. Vide Mutation No.66 attested under Section 4 of the Agrarian Reforms Act, 1976 (for short 'the Act') on 18.01.1980

on spot in presence of the villagers, Respondent No.3-Pareeto has been found to be a tiller cultivating the land on behalf of the owner against the

payment of $\frac{1}{4}$ th of the produce. Thereafter vide Mutation No.132 attested at Camp Rampur on 27.11.1999 under Section 7 of the Act, $\frac{1}{4}$ th

i.e. 9 kanals and 18 marlas have been allowed to be resumed in favour of the petitioner-landlord. When in fact 8 kanals and 5 marlas would be

$\frac{1}{4}$ th of the total land.

2. Petitioner-ex landlord challenged the mutation No.66 attested under Section 4 of the Act on 18.01.1980 in the year 2005 by instituting an

appeal captioned 'Bujo Devi v. Pareeto' on 15.01.2005 before the Appellate Authority i.e. Additional Deputy Commissioner with the powers of

Commissioner, Agrarain Reforms Kathua. The appellate authority has set aside the said mutation vide judgment dated 21.10.2010.

3. Respondent No.3 (Tenant) filed an application under Order 41, Rule 21 CPC before the Appellate Authority seeking re-hearing of the appeal.

Same has been rejected on 28.04.2011.

4. Respondent No.3 (Tenant-Pareeto) filed the revision petition captioned 'Pareeto v. Bujo Devi' before the Revisional authority (J & K Special

Tribunal Jammu) under Section 21 of the Act. Learned Revisional Authority while allowing the revision has observed that land covered by Survey

No.22 min situated at Village Rampur was a big chunk of State land totalling 116 kanals and 7 marlas allotted to different displaced persons but

none among the displaced families was in cultivating position of the said land. As such land was being cultivated by different tenants on the crucial

date of Kharif 1971.

5. Revisional Authority under the Agrarian Reforms Act has opined that the land has been rightly vested to the State while declaring the tenant, as

prospective owner having been cultivating the land on the crucial date of the year 1971. It has also been observed that Bujo Devi had filed Form-5

for resumption of the land under Section 7 of the Act based thereon mutation under Section 7 of the Act has been attested vide Mutation No.132,

which has not been challenged which means that Bujo Devi has admitted the petitioner as tenant. The said position had not been taken note of by

the appellate authority nor has the appellate authority examined the records available. Finally while accepting the revision petition, appellate order

dated 21.10.2010 has been set aside. It has also been opined that Bujo Devi has been rightly held entitled for resumption of land under Section 7

of the Act. The Pareeto (Tenant) prospective owner is entitled for conferment of ownership under Section 8 of the Act which the authority

concerned shall do by attesting mutation under Section 8 of the Act in favour of Pareeto(petitioner).

6. The Ex-landlord (Bujo Devi) aggrieved by the order of the Revisional authority has filed the instant petition.

7. Section 4 of the Act provides that all rights, title and interest in the land of

any person not cultivating it personally in Kharif 1971 shall be deemed to have been extinguished and vested in the State free from encumbrances with effect from 1st day of May, 1973 subject to certain exceptions which exceptions are not applicable to the present case.

8. Section 7 of the Act provides that an individual whose rights in land have been extinguished under Section 4 of the Act shall be entitled to resume land from the tenant but resumption shall be subject to the conditions as prescribed in Section 7(2) of the Act which amongst others provide for filing of form for resumption in a prescribed manner within one year of the commencement of the Act. After satisfying the other conditions prescribed, resumption of land has to be allowed to the extent of permissible limits and regarding rest of the land, tenant has to be conferred with the ownership under Section 8 of the Act.

9. The contention of the Counsel for the petitioner is that the petitioner has all along been in self cultivation of the land as is also recorded in the Khasra Girdwari. But such contention has been found to be without any force because in case of dispute relating to Girdwari, entries under Rule 4 of the Agrarian Reforms Rules, Agrarian Authorities are competent to conduct an enquiry on spot and to give findings thereon confirming the entry or indicating what entry should be made. In the instant case, entries have been contrary to the spot position as has been noticed in Mutation No.66 and it is in the same background while conducting proceedings of the Mutation for attestation, the Tehsildar has held, on spot enquiry, and thereafter has attested the mutation on 18.01.1980.

10. The position of Respondent No.3 being tenant of the land in the year 1971 is further supported by the fact i.e. the petitioner as landlord in terms of Section 7 of the Act had filed an application for resumption of the land which application has been allowed based on which mutation under Section 7 of the Act bearing No.132 has been attested on 27.11.1999. Petitioner-ex landlord has been permitted to resume $\frac{1}{4}$ th of the 33 kanals of the land but instead of 8 kanal and 5 marlas, 9 kanals and 18 marlas have been allowed to be resumed. Said mutation has not been challenged till date. To say that the petitioner has not filed any resumption form is irrelevant, when the mutation under Section 7 of the Act based on such resumption form has been attested in the year 1999 and not challenged

till date.

11. Mutation under Section 4 of the Act in favour of Respondent No.3 (tenant) has been attested in the year 1980, appeal has been filed against

that order in the year 2005 i.e. after 25 years. In addition thereto, mutation under Section 7 of the Act has been attested in the year 1999 till date

even after 16 years has not been challenged. Therefore, the contention of the petitioner that she was in self cultivation of the land is totally false,

simply aimed at depriving the tiller of the rights which have accrued to him under the provisions of the Act. If such a submission is accepted that

would defeat the very object of the Act.

12. The questions of fact as have been enquired into and decided first by the Tehsildar while conducting spot inspection and then having been

appreciated by the Revisional authority that too in the context of resumption application are not now open to any further interference. The

Revisional authority has appreciated all the facts, circumstances and the law on the subject, only thereafter has passed a well reasoned order which

does not call for any interference.

13. The writ petition being without any merit is according dismissed along with connected MP.

14. Caveat No.1040/2012 shall stand discharged.